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In re Application of	:	OFFICE OF PETITIONS
Enright, et al.	:	
Application No. 10/603,266	:	DECISION ON PETITION
Filed: June 23, 2003	:	
Attorney Docket No. D-1112 R2	:	
DIV	:	

This is a decision on the petition under 37 CFR 1.181, filed January 24, 2007, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

A Notice of Abandonment was mailed on December 7, 2007, stating that this application is abandoned for failure to take appropriate action in a timely manner after the May 3, 2007, decision of the Board of Patent Appeals and Interferences. Petitioner filed a request for rehearing on June 21, 2007. The request was denied on December 6, 2007.

Petitioner contends that the holding of abandonment of this application was improper. In this regard, 1.304(a) states that:

(1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 41.52(a), § 41.79(a), or § 41.127(d) of this title, the time for filing an appeal or commencing a civil action shall expire two months after action on the request.

Therefore, petitioner had up to and including February 6, 2008, within which to take appropriate action. A request for continued examination (RCE), and (submission), and a \$810 fee for the RCE were filed on February 5, 2008.

The rule at 37 CFR 1.304(a)(1) states:

The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 41.52(a), § 41.79(a), or § 41.127(d) of this title, the time for filing an appeal or commencing a civil action shall expire two months after action on the request.

Further, the rule at 37 CFR 1.198 states:

When a decision by the Board of Patent Appeals and Interferences on appeal has become final for judicial review, prosecution of the proceeding before the primary examiner will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.114 * *

Additionally, attention is directed to MPEP 1214.07 Reopening of Prosecution, which states:

Sometimes an amendment is filed after the Board's decision which does not carry into effect any recommendation made by the Board and which presents a new or amended claim or claims. In view of the fact that prosecution is closed, the appellant is not entitled to have such amendment entered as a matter of right. However, if the amendment is submitted with a request for continued examination (RCE) under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e), prosecution of the application will be reopened and the amendment will be entered. See MPEP § 706.07(h), paragraph I.

In view of the above, petitioner is correct that the time period for taking action after the mailing of the Board decision to deny the rehearing request is two (2) months from the December 6, 2007, mailing date thereof. Accordingly, the mailing of the Notice of Abandonment on December 7, 2007, was premature as the

period for reply to the Board decision had not yet expired. Additionally, the appropriate reply to continue prosecution in the form of an RCE, \$810 fee therefor, and the submission required by 37 CFR 1.114 were submitted within the two (2) month period for replying to the December 6, 2007, Board decision.

In view of the above, the holding of abandonment is improper. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The Office sincerely apologizes for the inconvenience caused petitioner in this matter.

This application is being referred to Technology Center AU 2621 for processing of the RCE and for taking appropriate action in the normal course of business on the submission under 37 CFR 1.114, filed February 5, 2008.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3222.



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Office of Petitions